IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND NORTHERN DIVISION

JAMES E. KELLY, JR.))
Plaintiff,) Civil Action No: 8:21-cv-00553-GJH
v.))
	<i>)</i>)
THE UNITED STATES OF AMERICA, and)
TOTE SERVICES, LLC a/k/a/)
TOTE SERVICES, INC. a/k/a/)
INTEROCEAN AMERICAN SHIPPING)
CORPORATION a/k/a INTEROCEAN)
UGLAND MANAGEMENT)
CORPORATION)
10401 Deerwood Park Blvd., Suite 1300)
Jacksonville, FL 32256)
)
Defendants.)

DEFENDANT UNITED STATES OF AMERICA'S MOTION TO DISMISS PLAINTIFF'S CLAIMS AND CO-DEFENDANT TOTE SERVICES

The United States of America, pursuant to Fed. R. Civ. P. 12(b)(1), respectfully requests the Court grant this motion to dismiss Plaintiff's claims against the vessel operator Tote Services, Inc., and against the United States. Under the applicable wavier of sovereign immunity, the United States is the only proper defendant for an injury to a seaman employed aboard a public vessel. *See* 46 U.S.C.A. § 30904. This exclusivity provision means that the Court lacks subject matter jurisdiction over Tote Services; and therefore, it should be dismissed.

Plaintiff's Complaint against the United States must likewise be dismissed, as Plaintiff has failed to exhaust his administrative remedies as set forth in 46 C.F.R. § 327. Mainly, Plaintiff did not file an administrative claim with the Maritime Administration ("MARAD"), a

jurisdictional prerequisite under the Suits in Admiralty Act (SAA). Therefore, the Court also does not have subject matter jurisdiction over Plaintiff's claims against the United States, and therefore they should be dismissed.

This motion is supported by a memorandum of law and exhibits, which are concurrently filed.

Dated: May 6, 2021 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2021, I served a copy of the forgoing to the following counsel via the Court's CM/ECF system.

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